



**Colorado  
Legislative  
Council  
Staff**

**SB16-128**

**FINAL  
FISCAL NOTE**

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 16-0556  
**Prime Sponsor(s):** Sen. Hodge  
Rep. Arndt

**Date:** June 6, 2016  
**Bill Status:** Postponed Indefinitely  
**Fiscal Analyst:** Chris Creighton (303-866-5834)

**BILL TOPIC:** AMEND AUGMENTATION & SUBSTITUTE WATER SUPPLY PLANS

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
<b>State Revenue</b>	<u>Less than \$5,000</u>	<u>Less than \$5,000</u>
Cash Funds	Less than \$5,000	Less than \$5,000
<b>State Expenditures</b>	Workload increase.	
<b>TABOR Impact</b>		Less than \$5,000
<b>Future Year Impacts:</b> Ongoing workload increase.		

**Note:** This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

**Summary of Legislation**

This bill allows water judges or other affected parties to reopen specific portions of augmentation plans or substitute water supply plans (SWSP) for amendments based on new technical information or operational experience, without reopening the entire plan. For a SWSP, replacement of depletions may be made during the limited duration period not to exceed five years.

**Background**

**Colorado's water law.** Under Colorado's water law, called the *doctrine of prior appropriation*, water is allocated based on the seniority of water right holders. When water supplies are insufficient to satisfy all water right holders, diversions by junior water right holders must be curtailed or ceased until senior water right holders are satisfied. Seniority, also called priority, is determined by the year in which the application for the water right was filed. Senior water rights are more valuable because they are more reliable than junior water rights.

**Augmentation plans and substitute water supply plans.** An augmentation plan is a court-approved plan to protect senior water right holders from impacts caused by out-of-priority diversions by junior water right holders. Augmentation plans enable out-of-priority diversions by replacing the water that junior water right holders consume. While an augmentation plan is proceeding through the court system, the state engineer may approve a SWSP allowing for an out-of-priority diversion.

**Water courts.** Water court judges have exclusive jurisdiction over the determination of new water rights, changes of water rights, approval of plans to protect senior water rights, findings of reasonable progress on water diversion projects, approval of water exchanges, and approvals to use water outside the state.

### **State Revenue**

This bill increases state cash fund revenue in the Judicial Department to the Judicial Stabilization Cash Fund. An applicant seeking a change to an augmentation plan is assessed a filing fee of \$447. This analysis assumes the same fee will be assessed for amendments to specific portions of an augmentation plan and will result in an increase of less than \$5,000 in cash fund revenue beginning in FY 2016-17.

### **TABOR Impact**

This bill increases state revenue from fees, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund. TABOR refund obligations are not expected for FY 2016-17.

### **State Expenditures**

This bill increases workload in the Department of Natural Resources (DNR) and the Judicial Department, beginning in FY 2016-17, as discussed below.

**Department of Natural Resources.** By allowing amendments to specific portions of an augmentation plan or SWSP this bill increases the number of amendments that are likely to be filed, resulting in a workload increase in the Division of Water Resources (DWR) in the DNR. DWR staff time is needed to review these amendments to assess the impact to the river. Staff must review the entire augmentation plan or SWSP and it is anticipated that each augmentation plan amendment review will require 120 hours of staff time and each SWSP amendment review will require 16 hours. However, fewer than 10 amendments are expected annually and this workload can be addressed within existing appropriations. If the number of amendments is greater than 10, additional appropriations may be sought through the annual budget process.

**Judicial Department.** This bill increases workload in the water courts to review and rule on proposed augmentation plan amendments. Fewer than 10 amendments are expected to be filed annually and additional workload can be addressed within existing department appropriations.

### **Effective Date**

The bill was postponed indefinitely by the Senate Agriculture, Natural Resources, and Energy committee on March 3, 2016.

**State and Local Government Contacts**

Judicial Civil

Natural Resources

**Research Note Available**

An LCS Research Note for SB16-0128 is available online and through the iLegislate app. Research notes provide additional policy and background information about the bill and summarize action taken by the General Assembly concerning the bill.